

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION No.10866 OF 2007**

**ORDER:**

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The 1<sup>st</sup> petitioner herein claims to be the owner of the house property situated in Sy.No.126 of Kukatpally village & Municipality, Balanagar Mandal, Ranga Reddy District, having purchased the same under a registered sale deed dated 9.12.2004 executed by the 2<sup>nd</sup> respondent herein along with his brother through a General Power of Attorney. Subsequently, the name of the 1<sup>st</sup> petitioner was also mutated in the municipal records and he has been paying the taxes regularly to the Municipality.

While so, possession notice dated 21.12.2005 under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), issued by the 1<sup>st</sup> respondent in the name of the 2<sup>nd</sup> respondent (petitioners' vendor) was received by the 1<sup>st</sup> petitioner. From the said notice, the 1<sup>st</sup> petitioner came to know that the house property in question was given as security in connection with a loan facility availed by the 2<sup>nd</sup> respondent from the 1<sup>st</sup> respondent-Bank and that since the 2<sup>nd</sup> respondent committed default in repayment of the loan amount, the 1<sup>st</sup> respondent-Bank had invoked the provisions of the Act, and sought to take possession of the property in question.

Aggrieved by the said action of the Bank, the 1<sup>st</sup> petitioner filed W.P.No.642 of 2006 seeking a declaration that the notice dated 21.12.2005 issued under Section 13(4) of the Act by the 1<sup>st</sup> respondent is arbitrary and illegal. Though the 1<sup>st</sup> petitioner had also sought for interim direction not to dispossess him from the property in question, no such relief was granted, but this Court merely ordered notice to the respondents and the said writ petition is still pending.

While so, the 1<sup>st</sup> respondent-Bank moved an application under Section 14 of the Act in the Court of the Chief Metropolitan Magistrate, Nampally, Hyderabad, in which an order was passed on 24.4.2007 appointing an Advocate-Commissioner to take physical possession of the property in question and hand over the same to the 1<sup>st</sup> respondent-Bank. Pursuant thereto, when the Advocate-Commissioner along with police sought to take physical possession of the property from the petitioners, they approached the 1<sup>st</sup> respondent-Bank requesting not to proceed with the sale of the property in question since the 1<sup>st</sup> petitioner was a *bona fide* purchaser and that the documents deposited by the 2<sup>nd</sup> respondent while obtaining the loan were fake documents. However, the 1<sup>st</sup> respondent-Bank declined to consider the request of the petitioners. Though the petitioners moved an application before the Court of the Chief Metropolitan Magistrate, Hyderabad, to recall the order dated 24.4.2007, the same was not entertained on the ground that such application is not maintainable.

Hence, this writ petition seeking a declaration that the action of the 1<sup>st</sup> respondent-Bank in initiating proceedings under Section 14 of the Act for taking physical possession of the property in question, which was leased out to the 2<sup>nd</sup> petitioner herein for running an educational institution, as arbitrary and illegal.

I have heard the learned counsel for the petitioners and perused the material on record.

From the facts narrated above, it is clear that the proceedings under the Act were initiated by the 1<sup>st</sup> respondent-Bank for enforcing the security interest created in its favour. Even according to the petitioners, the property was purchased by the 1<sup>st</sup> petitioner on 9.2.2004. Nothing has been placed before this Court to show that the said property was mortgaged in favour of the 1<sup>st</sup> respondent-Bank after the sale transaction in favour of the 1<sup>st</sup> petitioner. Admittedly, the petitioners were aware of the possession notice dated 21.12.2005,

which is the subject matter of W.P.No.642 of 2006.

It is true that the said writ petition is pending before this Court, in which it was alleged by the petitioners that the notices under

Section 13(2) and 13(4) of the Act were not served on him, however, since no orders have been passed by this Court restraining the 1<sup>st</sup> respondent-Bank from proceeding further, I am unable to hold that the impugned action of the 1<sup>st</sup> respondent in making an application under Section 14 of the Act seeking assistance to take possession of the secured asset as arbitrary and illegal.

Moreover, as held by a Division Bench of this Court in W.P.Nos.26663 of 2005 and 27553 of 2005 dated 17.2.2006, the right of appeal/representation under Section 17 of the Act is available to the aggrieved person even against an order made under Section 14 of the Act. Hence, even assuming that the petitioners are aggrieved by the impugned proceedings under Section 14 of the Act, it is always open to them to work out the remedy available under Section 17 of the Act.

For the aforesaid reasons, I am not inclined to entertain this writ petition and the same is accordingly, dismissed. However, this shall not preclude the petitioners to work out the alternative remedy available under the Act, if so advised. No costs.

14.6.2007.

Kgr

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION No.10866 OF 2007**

14<sup>th</sup> June, 2007.

Between:

V. Nageshwara Rao and another.

.. Petitioners.

And

The Punjab National Bank  
Housing Finance Ltd.,  
Saifabad Branch,  
Hyderabad and another.

..Respondents.

23<sup>rd</sup> April, 2007.  
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(G. ROHINI, J).